

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

RICHARD LEROY RUSSELL,) Cause No. CV 06-08-H-DWM-CSO
)
Plaintiff,)
)
vs.) FINDINGS AND RECOMMENDATION
) OF UNITED STATES MAGISTRATE
MONTANA STATE PRISON, MIKE MAHONEY,) JUDGE TO DISMISS COMPLAINT
Warden; DON BERRYMAN, Habilitative)	
Services; ROSS SWANSON, Deputy)	
Warden; MYRON BEESON, Associate)	
Warden; KEN INGLE, Director R.A.C.;)	
and JOHN DOE,)
)
Defendants.)
)

On September 13, 2006, this Court issued an Order finding that Plaintiff's Complaint, as filed, failed to state a claim on which relief may be granted because it did not allege facts to support each element of his claims. (*Court's Doc. No. 5*). The Court allowed Plaintiff the opportunity to file an Amended Complaint on the form provided by the Court. (*Id.*) Plaintiff was specifically warned that should he fail to timely file an Amended Complaint, the Court would recommend the Complaint be dismissed without prejudice for failure to state a claim on which relief may be granted.

The Court allowed Plaintiff until October 9, 2006, to file any such Amended Complaint. Plaintiff did not respond to the Court's Order and has not filed an Amended Complaint.

Accordingly, the Court enters the following:

RECOMMENDATION

Plaintiff's Complaint (*Court's Doc. No. 1*) should be **DISMISSED** without prejudice for failure to state a claim on which relief may be granted, and the Clerk of Court should be directed to have the docket reflect that the filing of the Complaint should count as one strike against Plaintiff, pursuant to 28 U.S.C. § 1915(g).

**NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND
CONSEQUENCES OF FAILURE TO OBJECT**

The Clerk of Court shall serve a copy of this Findings and Recommendation of the United States Magistrate Judge upon the Plaintiff. Plaintiff is advised that pursuant to 28 U.S.C. § 636(b)(1), he has the right to file written objections to this Findings and Recommendation. Any objections to the Findings and Recommendation must be filed with the Clerk of Court within twenty (20) days after the signing of this recommendation, or objection is waived.

**PLAINTIFF IS CAUTIONED THAT HE MUST KEEP THE COURT ADVISED
OF ANY CHANGE OF ADDRESS.**

DATED this 24th day of October, 2006.

/s/ Carolyn S. Ostby
Carolyn S. Ostby
United States Magistrate Judge